

PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q101928

Alex STOLARZ, et al.

Appln. No.: 10/784,946

Group Art Unit: 1794

Confirmation No.: 9516

Examiner: Marc A. PATTERSON

Filed: February 25, 2004

For: THERMOPLASTIC MULTILAYER COMPOSITE IN THE FORM OF A HOLLOW BODY

STATEMENT OF SUBSTANCE OF INTERVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please review and enter the following remarks summarizing the interview conducted on May 9, 2008:

REMARKS

An Examiner's Interview Summary Record (PTO-413) has not yet been received.

During the interview, the following was discussed:

1. **Brief description of exhibits or demonstration:** None
2. **Identification of claims discussed:** 26
3. **Identification of art discussed:** Mason
4. **Identification of principal proposed amendments:** Amend the claims to specify

that the composition of the inner, intermediate and outer layers "consist essentially of" the recited materials, thereby limiting the materials to those having no material effect on the

composition. Mason teaches the same material with EVOH as a compatibilizer for all three layers.

Brief Identification of principal arguments: In connection with the proposed amendment, Applicants argued that (1) the phrase “consisting essentially of” recited materials limited the claims with respect to both the inner/outer layer compositions and the intermediate layer composition, and (2) the specification of the compatibilizer as one that is selected from the group consisting of “impact strength modifiers, elastomers and rubbers” was not taught in Mason et al. Applicants asserted that, as to feature (1), this made the recited components dominant and, while not excluding materials that do not materially affect the basic and novel characteristics of these limitations (e.g., additives), they clearly distinguish over Mason et al. With respect to feature (2), Applicants asserted that the compatibilizer in Mason et al uses EVAL and this provides a brittle substance that does not meet the claim limitations.

With respect to point (1), the Examiner responded that, for example with respect to the intermediate layer, Mason teaches at col. 5, lines 44-48 that the EVAL can be up to 70%. The Examiner interpreted this as “consisting essentially of” EVAL. Moreover, the Examiner asked where there is support in the specification for the range of EVAL that would be covered by the limitation. Similarly, the Examiner asserted with respect to the inner and outer layer compositions, support for the meaning of “consisting essentially of” must be shown in the way of percentages or proportions of materials. Finally, the Examiner suggested that the composition be stated as “consisting of,” which restricts the composition to only the recited materials. .

With respect to point (2), the Examiner had no comment other than to note that Mason et al teaches as little as 0.1 to 10 percent of EVAL (abstract) and that, for the argument about EVAL being too brittle to be effective, it must be shown by the Applicant, through tests or papers, that the lower range composition would still be brittle. As to the claimed “impact strength modifiers, elastomers and rubbers,” Applicant argued that, even at the lowest level of EVAL, there is no teaching of a compatibilizer that comprises “impact strength modifiers, elastomers and rubbers” as EVAL is not such material.

5. Indication of other pertinent matters discussed: None

6. Results of Interview: No agreement, but

It is respectfully submitted that the instant STATEMENT OF SUBSTANCE OF INTERVIEW complies with the requirements of 37 C.F.R. §§1.2 and 1.133 and MPEP §713.04.

It is believed that no petition or fee is required. However, if the USPTO deems otherwise, Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 19-4880.

Respectfully submitted,

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